IN THE HIGH COURT OF JUDICATURE AT BOMBAY

O.O.C.J.

NOTICE OF MOTION NO.3264 OF 2004

IN

SUIT NO.3166 OF 2004

...

Madhu Kacharam Achra ...Plaintiff

v/s.

Gul Kachharam Achra & Ors. ...Defendants

AND

NOTICE OF MOTION NO.3607 OF 2004

IN

SUIT NO.3530 OF 2004

...

M/s.Khushalani Investments
Pvt.Ltd. ...Plaintiff

v/s.

Gul Kachharam Achra & Ors. ...Defendants

...

AND

NOTICE OF MOTION NO.3608 OF 2004

IN

SUIT NO.3531 OF 2004

...

Suresh Achhra & Anr. ...Plaintiffs

v/s

Gul K. Achhra & Ors. ...Defendants

...

Mr.B.P. Apte with Mr.R.S.Apte i/b N.R. Babna for the Plaintiffs in N.M.No.3264 of 2004 & N.M.No.3607 of 2004.

Mr.Y.S. Jahagirdar i/b N.R.Babna for the Plaintiffs in N.M.No.3608 of 2004.

Dr.V.V.Tulzapurkar with Mr.Shyam Diwan i/b Ashwin Ankhad for Defendants Nos. 1 & 2.

Mr.Virag Tulzapurkar with Ms.Alpana Ghone i/b Kanga & Co. for Defendants Nos. 3 to 7.

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CORAM: D.K.DESHMUKH, J.

DATED: TH APRIL,2005

JUDGMENT:

1. The disputes in these suits and notices of motion

relate to sell of shares of a company Odeon Exhibitors Pvt.Ltd. by Gul Kachharam Achra to the members of Runwal family and therefore these notices of motion can be conveniently disposed of by a common order.

2. Admittedly, Odeon Exhibitors Pvt.Ltd.,(hereinafter referred to as "Odeon") was controlled by members of Achra family. 990 shares of Odeon were held by Mr. Madhu Achra, who is Plaintiff in Suit No.3166 of 2004, 225 shares of Odeon were held by Mr.Suresh Achra, 315 share of Odeon were held by Ms.Pramila Chhutani, who are Plaintiffs in Suit No.3531 of 2004, 990 shares of Odeon were held by M/s.Khushalani Investments Pvt.Ltd., which is Plaintiff in Suit No.3530 of 2004. It is an admitted position that M/s.Khushalani Investment Pvt.Ltd. is a company controlled by Mr.Ashok Khushalani. It also an admitted position that Mr.Gul Achra and his wife Mrs. Kanta Gul Achra together held 990 shares of Odeon. M/s.Achra Investments Pvt.Ltd., which is a company controlled by Mr.R.K.Achra also held 990 shares. It is an admitted position that Gul Achra is Defendant in all these three suits. Mr.Madhu Achra, who is Plaintiff in Suit No.3166 of 2004, Mr.Suresh

Achra who is Plaintiff No.1 in Suit No.3531 of 2004 and one Mr.Ram Achra are real brothers, whereas Ms. Pramila Chhuttani who is Plaintiff No.2 in Suit No.3531 of 2004 is their sister. Mr.Ashok Khushalani, whose company M/s.Khushalani Investment Pvt.Ltd. is Plaintiff in Suit No.3530 of 2004 is brother-in-law of Mr.Madhu Achra, Mr.Suresh Achra and Mr.Ram Achra. It is an admitted position that Odeon is owner of Plot No.194 of Town Planning Scheme Ghatkopar No.III, city survey No.5752, where Cinema Theatre by name "Odeon Theatre" was constructed. It is the case of the Plaintiffs in all these three suits that Mr.Gul Achra, who is Defendant in all these suits has transferred his share as also shares of the Plaintiffs in these three suits to Runwal family in the month of August, 2004. According to the Plaintiffs, he transferred their shares in his favour by committing forgery of their their signatures on the transfer forms and thereafter transferred the entire share holdings alongwith his own shareholdings to Runwal family. Thus, presently Odeon is controlled by Runwal family. Prayer clauses of these suits show that the Plaintiff are claiming a declaration that they are owners of the shares as described above of Odeon. A further declaration is

sought that transfer of their shares in favour of Gul Achra is illegal and further transfer of those shares by Gul Achra to Runwal family is also illegal. They also claim restoration of their share holdings in Odeon. The Plaintiffs also claim a permanent injunction restraining the Defendants from further transferring the shares. They also claim a permanent injunction against the Defendants restraining them from transferring, creating third party rights or carrying out construction on the plot of land owned by Odeon.

3. By the notices of motion taken out by the Plaintiffs, the Plaintiffs claim appointment of the Receiver on the shares of Odeon, which according to the Plaintiffs are held by them. They also claim appointment of the Receiver on the property of the Odeon, which has also been joined as Defendant in all these three suits. The Plaintiffs also claim temporary injunction restraining the Defendants from transferring the shares of Odeon. They also claim temporary injunction restraining the Defendants from creating third party rights , transferring or raising construction or carrying out demolition on the plot of land owned by Odeon.

4. The case of the Plaintiffs is that, Odeon was managed by Gul Achra, who is Defendant No.1 in all the three suits. He being the member of family and close relative, their share certificates were in possession of Gul Achra. They had complete faith in Gul Achra. Gul Achra committing breach of their trust forged their signatures on the share transfer forms and transferred their shares in his own name and thereafter transferred those shares to the Runwal family.

5. The defence of the Defendants, firstly, is that in these suits no interim orders in relation to the property held by Odeon can be passed, because the subject matter of the suit is not the property held by Odeon, but only the shares of Odeon are subject matter of each suit. It is claimed that the suit has been valued only on the value of the shares and court fees is accordingly paid, and therefore, according to the Defendants no interim order in relation to the property of the Odeon can be passed. It is further submitted that temporary injunction in these notices of motion in relation to the property is sought also against the Odeon, which is Defendant in all the

suits. It is submitted that an order of temporary injunction against the company, which is admittedly the owner of the property cannot be made.

6. It is further the defence of the Defendants that so far as Madhu Achra, who is Plaintiff in Suit No.3166 of 2004 is concerned, he has taken contradictory stands from time to time in relation to transfer of his shareholdings in Odeon, and therefore, his case that his shares were transferred by Gul Achra to himself by forging his signature is incapable of being believed. It is submitted that the said Madhu Achra had filed an affidavit dated 9th March, 2004 in this Court in Suit No.3980 of 2003, wherein he had referred to some family arrangement, whereunder he was to transfer 50% of his holding in favour of his brother Ram Achra and he got Ram's share in a partnership firm, which holds property in Ulhasnagar. It is submitted relying on the affidavit filed in the suit filed in Kalyan Court by Madhu Achra that he has got control of the firm in Ulhasnagar pursuant to the family arrangement. It is further submitted that the case put up by the Plaintiffs in other two suits is also incapable of being believed, because in July, 1996 a public notice

was issued by Madhu Achra and Ashok Khushalani, who were Directors of Odeon stating therein that Gul Achra without their consent and concurrence and without concurrence of Board of Directors is trying to dispose of the property of the Odeon. It is submitted that though a copy of that public notice is filed with the plaint by the Plaintiffs, they have not stated as to what action was taken by them after publishing that notice. It is contended that the case put up by the Plaintiffs regarding forgery of their signatures is incapable of being believed. It is also contended by the Defendants that Runwal family are bonafide purchaser of the shares without notice of any of the contentions which are urged in the suit. They have purchased the property after paying market price and after issuing public notice, and therefore, no interim order which will adversely affect their interest can be made.

7. After having heard the learned Counsel for both sides at length and after having carefully examined the record, I find considerable force in the contention urged on behalf of the Defendants that so far as Madhu Achra is concerned, he has taken contradictory stands about the transfer of his

shareholdings in Odeon at different points of time. I also find that the conduct of Mr.Madhu Achra and Mr. Ashok Khushalani of not taking any action and not making any statement in relation to the steps taken by them after issuing public notice in the month of July, 1996 is curious and creates doubt about the credibility of their case. In my opinion, the Plaintiffs cannot be granted any interim relief in their favour in relation to the property of Odeon because of the frame of their suits. Taking plaint in Suit No.3166 of 2004 first, the valuation clause of the plaint reads as under:-

> "For the purpose of court fees and jurisdiction the plaintiff values his claim in this suit at Rs.1,98,000/- being the value of his 990 shares & at Rs.1000/- for injunction. The plaintiff, therefore has affixed the court fees of Rs.8430/- to present suit in accordance with provisions of Bombay Court Fees Act. I undertake to pay additional court fees, if required."

8. Thus, the Plaintiffs are valuing their claim in relation to the value of their shares in Odeon. Perusal of the valuation clause in two other suits shows that same approach is adopted by the Plaintiffs in those suits also. Thus the subject matter of these suits are the shares which were held by the Plaintiffs. The Plaintiffs as share holders will not get any interest over the property of the company. In my opinion, therefore, in these circumstances, reliance was rightly placed by the learned Counsel appearing for the Defendants on a judgment of the Supreme Court in the case of Mrs.Bacha F. Guzdar v/s. Commissioner of Income Tax, AIR 1955 S.C. 74, particularly on following observations:

> "A shareholder has got no interest in the property of the company though he has undoubtedly a right to participate in the profits if and when the company decides to divide them. The interest of a shareholder 'vis-a-vis' the company was explained in the 'Sholapur Mills Case'- 'Charanjit Lal v. Union of India' AIR 1951 SC 41 at

pp.54,55 (B). That judgment negatives the position taken up on behalf of the appellant that a shareholder has got a right in the property of the company. It is true that the shareholders of the company have the sole determining voice in administering the affairs of the company and are entitled, as provided by the Articles of Association, to declare that dividends should be distributed out of the profits of the company to the shareholders but the interest of the shareholder either individually or collectively does not amount to more than a right to participate in the profits of the company.

The company is a juristic person and is distinct from the shareholders. It is the company which owns the property and not the shareholders. The dividend is a share of the profits declared by the company as liable to be distributed among the shareholders. Reliance is placed on behalf of the appellant on a passage in Buckley’s Companies Act (12th Ed. page 894) where

> the etymological meaning of dividend is given as dividendum, the total divisible sum but in its ordinary sense it means the sum paid and received as the quotient forming the share of the divisible sum payable to the recipient. This statement does not justify the contention that shareholders are owners of a divisible sum or that they are owners of the property of the company.

9. The Plaintiffs, therefore, are not at all justified in claiming any temporary injunction or an order of appointment of receiver in relation to the property of the Defendant No.3/company. The property is held by the company. What is surprising is that the Plaintiffs are seeking temporary injunction against the company also restraining it from dealing with its own property. It is further to be seen here that now third party interests have been created in the property, the shares have been purchased by the Runwal family for valuable consideration. They have taken due care before purchasing the property. They published public

notice. None of the Plaintiffs raised any objection.

10. The case put up in the plaint by Madhu Achra is that he owns 990 shares of Odeon which are fraudlently transferred by Gul to himself. Perusal of his affidavit dated 9th March, 2004 filed in Suit No.3980 of 2003 in this Court shows that he in Feb/March 1992 had agreed to transfer his 50% holdings in Odeon to his brother Ram in exchange of Ram's share in a partnership firm Shri Laxmi Talkies. He further states that he instructed Gul to transfer his 50% holding in Odeon to Ram and that he took over Ram's share in the above referred firm. The facts that were stated in the above referred affidavit were relevant facts in the suit filed by Madhu, therefore, he was under a duty to disclose them in the plaint, I do not find any explanation given anywhere by Madhu as to why he did not disclose these relevant facts in the plaint. Therefore, I find substance in the submission of the Defendants that Madhu is guilty of suppression of relevant facts. In the affidavit referred to above Madhu states that he transferred his 50% holding in Odeon to Ram. It was argued that the settlement

with Ram did not go through therefore, Madhu continued to hold 22% share of Odeon. However, perusal of the affidavit filed by Madhu in the suit filed by Ram in Kalyan Court shows that there the stand of Madhu is that Ram has no share in the Firm's property. In this situation, it was for Madhu to explain how he got Ram's share in the firm without transferring to him his 50% holding in Odeon. It appears that Madhu is taking contradictory stands about the extent of holding in Odeon. A Plaintiff who is withholding relevant facts, who is taking contradictory stands about relevant and material aspects cannot be said to have strong prima facie case in his favour.

11. All the Plaintiffs in the three suits have relied on the public notice issued in July, 1996 by Madhu Achra and Ashok Khushlani along with Ram Achra informing the public that they are Directors of Odeon and that their co-director Gul Achra is trying to dispose of the property of the Company without the permission of the Board of Directors. Perusal of this public notice shows that in 1996 itself the Plaintiffs apprehended that Gul will dispose of the Company without their consent. In the plaints one

does not find anything stated as to what happened after the publication of the notice, what steps were taken by the persons who had published the notice to prevent Gul Achra from carrying out his scheme. It is to be noted that those persons were the Directors of the Company. In the face of the public notice of 1996, it is difficult to believe, as claimed in the plaints, that the Plaintiffs had complete faith in Gul Achra, therefore, they kept their shares in his custody. Runwal family before purchasing the shares had issued public notice in October, 2003. The Plaintiffs have filed copy of that public notice. Pursuant to the public notice, objection was lodged by only Ram, but Ram has not filed any suit challenging transfer of shares of Odeon to Runwal family. After having gone through the pleadings of the Plaintiffs and the documents produced by them, the impression one gets is that the Plaintiffs are not disclosing full and complete relevant facts before the Court. Taking overall view of the matter, in my opinion, it cannot be said that the Plaintiffs have made out a strong prima facie case.

12. For all these reasons, in my opinion, it would not be in the interest of justice to grant the

interim reliefs sought by these notices of motion. Notices of motion in all the three suits are, therefore, disposed of.

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